



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

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SUBJECT: Draft Final Audit Report on the Democratic Party of Wisconsin (LRA #952)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Draft Final Audit Report ("DFAR") on the Democratic Party of Wisconsin ("the Committee"). The DFAR contains two findings: Misstatement of Financial Activity (Finding 1); and Recordkeeping for Employees (Finding 2). Our comments in this memorandum address both findings. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

II. MISSTATEMENT OF FINANCIAL ACTIVITY (Finding 1)

The DFAR finds that the Committee misstated its receipts and disbursements for 2011 and 2012 and lists the various discrepancies that resulted in the misstatements.

The Committee responded to this finding and it focuses on two of the discrepancies: (1) incorrect reporting of vendor refunds, and (2) incorrect reporting of joint fundraiser receipts.

With respect to the reporting of vendor refunds, the Committee reported them as negative entries on Schedule B rather than as offsets to operating expenditures on Schedule A, which is how the Commission instructs committees to report refunds. *See Commission Instructions for Form 3X.*¹ The effect of this reporting error would be to understate both the Committee's total disbursements and the Committee's total receipts.²

With respect to the reporting of joint fundraising receipts, the Committee effectively reported these twice: (1) in the proper manner as transfers from two joint fundraiser representatives on Schedule A, pertaining to itemized receipts, and (2) as contributions from the individuals who made the contributions collected by the joint fundraiser representatives, rather than as memo entries.³ This had the effect of overstating receipts in the year 2012.

The DFAR notes that while the substance of the transactions was included in the Committee's disclosure reports, nevertheless, because they were improperly disclosed, the Committee's total receipts, total disbursements, and cash balances were misstated. The Committee, however, argues that while it may have erred in the manner in which it disclosed the relevant information, it nevertheless did make a timely disclosure of the information, and, therefore, that the monetary amounts associated with these two discrepancies should not be included in the cumulative dollar amount of the misstatements.

The Committee's argument is based on the assumption that the mere disclosure of a financial transaction is sufficient. There is, however, another component to disclosing financial transactions: accuracy. The Commission's regulations require such disclosure reports to be accurate. 11 C.F.R. § 104.14(d). The Committee's method of disclosure resulted in inaccuracies in these three total values: total receipts, total disbursements, and cash balances. Committees must report the amount of cash on hand at the beginning of the reporting period, and the total amount of all receipts and all disbursements, *as well as* the total amounts of receipts and disbursements in

¹ See <http://www.fec.gov/pdf/forms/fecfrm3xi.pdf>

² For the year 2012, the DFAR finds that the Committee overstated rather than understated total receipts and disbursements. However, this appears to be primarily the result of the magnitude of the second reporting error discussed in the DFAR – namely, the double reporting of joint fundraising receipts (\$457,814), as well as the magnitude of a third error not addressed by the Committee in its response to the Interim Audit Report, namely, payments to the same vendor reported twice (\$514,424), which created an overall overstatement of receipts and disbursements.

³ The Committee notes that this reporting error arose from a clerical mistake, in which the wrong box was selected in the Committee's campaign finance software.

various enumerated categories. *See* 52 U.S.C. § 30104(b)(1), (2), (4);⁴ 11 C.F.R. § 104.3(a)(1), (2), (b)(1). Thus, both overall totals and individual totals for specific types of receipts and disbursements are significant for disclosure purposes and are correctly included in the total amount in the finding. However, the DFAR does not reference the Committee's argument. Because this is an important argument that raises a legal issue, we recommend that the Audit Division revise the DFAR to include this argument.

III. RECORDKEEPING FOR EMPLOYEES (Finding 2)

Our comments on this finding address the following points: (1) our recommendation that the Audit Division explain why it is accepting the Committee's proposed electronic recordkeeping system as an adequate employee log; (2) our recommendation that the Audit Division highlight certain salary payments for the Commission's consideration; and (3) our discussion of a legal argument that the Committee may be making. We address each of these three points in sequence below.

First, we recommend that the Audit Division explain why it is accepting the Committee's proposed electronic recordkeeping system for the log requirement. The Committee has developed an exclusively electronic system for its employees to use in order to record the time they spend in connection with Federal elections in the future. The Committee provided a sample screen shot of its new time log, and argued that this system complies with the requirements of Commission regulations. The DFAR states that such action is consistent with Commission payroll log requirements, but it does not explain why it is consistent. We, therefore, recommend that the Audit Division revise the DFAR to explain why this system meets the employee log requirement.

Second, we recommend that the Audit Division highlight certain salary payments for the Commission's consideration. The DFAR finds that the Committee did not maintain monthly logs in accordance with 11 C.F.R. §106.7(d)(1) to document the percentage of time each employee spent in connection with a Federal election. For 2011 and 2012, the Committee was required to, but did not, maintain logs for payroll totaling \$3,627,262. This amount includes \$2,192,554, for which payroll was allocated with Federal and non-federal funds, and \$1,434,708 for which payroll was exclusively non-federal. The DFAR further resolves these totals into subtotals based on different categories of spending and different periods of time over which the money represented by the subtotals was spent.

The Commission recently addressed recordkeeping findings in two audit reports, and its votes on these findings differed with respect to the need to keep a log for payments of non-federal funds to committee employees for non-federal work performed. In one of the audit reports, the Commission voted unanimously to approve the total amount of the recordkeeping finding where the non-federal payment portion represented payroll paid exclusively out of non-federal funds during periods in which the same employee was also paid from a Federal account. *See* Final Audit

⁴ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was recodified from Title 2 of the United States Code to new Title 52 of the United States Code. All Title 2 references in this document are to the former statutory provisions.

Report on the Dallas County Republican Party (A11-14). In the other audit report, the Commission split on whether to approve that part of the recordkeeping finding dealing with exclusively non-federal payments during certain months. See Final Audit Report on the Republican Party of Iowa (A11-24).

Thus, the resulting findings in the two audits appear to differ depending upon whether employees who were paid exclusively out of non-federal funds in a given period of time were also paid out of Federal funds within that same period of time. Because this factual question appears to be salient for the Commission, we would recommend that the Audit Division revise the DFAR to highlight the referenced amounts that would be in contention given the Commission's considerations in the previous audit reports.

Finally, the Committee's response to the Interim Audit Report may raise a legal argument as to whether the Commission should apply the employee log requirement to a party committee heavily involved in non-federal elections.⁵ The Committee notes that the scope of the Commission's jurisdiction over a party's payments to employees with non-federal funds for non-federal work has been a subject of recent debate. The Committee contends that it was heavily involved in non-federal elections during the audit cycle, and that its situation provides an example of the burden experienced by similarly situated state parties resulting from the imposition of a log-keeping requirement for these types of matters.

To the extent that the Committee's statement might implicitly raise a legal argument that the burden it experiences is unjustifiable because of the absence of a valid basis for exercising jurisdiction over such payments, we conclude that the log requirement of 11 C.F.R. § 106.7(d)(1) applies to payroll paid exclusively out of non-federal funds for non-federal work. The language of section 106.7(d)(1) is broad in that it applies by its terms to "each employee," and "each employee," necessarily includes all of a committee's employees, including those who spend no time in connection with Federal elections, because zero percent is also a percentage of time spent in connection with Federal elections.⁶ The Committee's representations that employees paid with non-federal funds spent no time on matters connected with Federal elections need to be documented in logs in order to ensure that, in light of potential concerns about funding Federal election-related activity with Federally non-compliant funds, Commission auditors may verify the accuracy of those representations. See Office of the General Counsel Comments on Interim Audit Report on the Democratic Party of Wisconsin (LRA 952), at 3-4.

⁵ We note also that the Committee could be raising a policy argument for the Commission's consideration.

⁶ This reasoning parallels reasoning that the Commission had adopted when it answered in the affirmative the related question of whether the monthly log keeping requirement applies to employees who spend one-hundred percent of their time on matters connected with Federal elections. See *OGC Memorandum on Request for Early Consideration of a Legal Question in LRA 917 (Vermont Democratic Party)*, at 2; and *OGC Memorandum on Request for Early Consideration of a Legal Question in LRA 921 (Democratic Party of Illinois)*, at 2.